



Great Classical Music, 24 Hours A Day

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August 20, 2005

Marlene H. Dortsch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Secretary Dortsch,

Enclosed is one original and ten copies of our formal comments in reference to "Creation of a Low Power Radio Service", FCC 05-75, MM Docket No. 99-25, dated July 7, 2005.

Please stamp the tenth copy as our official receipt and return it to us in the pre-addressed, prepaid envelope.

Please contact me immediately if any additional material or clarification is desired.

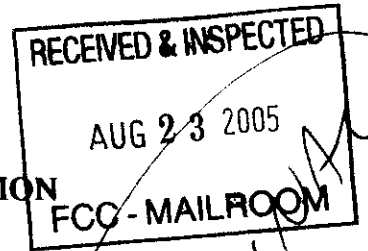
Thank you for consideration of our opinions and suggestions.

Sincerely,

Deborah S. Proctor
General Manager

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554



In the Matter of:

Creation of a
Low Power Radio Service

MM Docket No. 99-25

Comments of Educational Information Corporation

The commentor, better known as "WCPE", is an independent non-profit corporation, and operates a 100% community-financed non-commercial educational FM radio service.

WCPE currently serves listeners inside our fringe area with three FM translators. (We will use our 20 dBu F(50,50) signal strength contour as our definition of "fringe" area.) WCPE has recently obtained permits for FM translators for listeners in seven fringe cities, and has applications on file in two dozen fringe area cities which have not yet received action. Citizens who live in our fringe areas have asked for a better signal; they like what they hear, and they want to be able to listen to WCPE reliably, in stereo, without static.

The ongoing requests of the residents of these communities demonstrates the need and public interest in our service. WCPE offers a unique service; our listeners know that. They want a good quality signal from our 100% classical music station. There is no other station like ours serving their home towns; they know it is unlikely that there ever will be.

Changing The Rules:

Five years ago, the Commission created a Low Power FM Service (LPFM) with the specific provision that new LPFM stations would not cause interference to existing stations or their translators. LPFM and FM translators were to be basically treated as services with essentially equal rights and equal protection under the law. They were to co-exist. Now, the Commission is considering a proposal to allow LPFM stations to displace translator stations.

**We believe the airwaves should be open to new voices,
*but not by silencing existing voices or drowning them out with radio interference.***

The Commission has been asked not only to allow interference to be caused to FM translators as operated or proposed by WCPE and other public radio broadcasters, but the

Commission has essentially been asked to give the general LPFM service the ability to silence translator services and assume the frequencies formerly used by those services. This would be permitted regardless of the wishes of the local residents and despite the fact that in the past, the Commission decided that grant of the original translators was in the public interest.

What of the issue of quality service to the public? Which provides a better quality service -- a LPFM station operated by enthusiasts part of the time and silent or programmed by a computer during the rest -- or a public radio service operated live around the clock by experienced professionals with proven talent, quality programming, and extensive resources?

We are also concerned that the Commission has requests seeking to categorically dismiss our pending translator applications (those two dozen on the "singleton" list); worse, rescind our prior permission to construct FM translators which have just been authorized (the seven "singleton" grants); and worst, even require termination of our three licensed FM translators on the air and serving thousands of listeners around the clock.

Such draconian actions would negatively affect thousands of WCPE listeners and millions of public radio listeners across the Nation.

Most public stations are operated by smaller non-profit groups, including university systems and community licensees like WCPE. WCPE is 100% financed by listener gifts. The fact that our translator listeners give their own funds to pay for and operate the translators should be *prima facie* evidence to the Commission demonstrating the highest order of local public interest and desire to hear a clear signal from our public radio station.

Our Translator Listeners are NOT Second Class Listeners

Our translator listeners don't consider themselves to be "secondary status" listeners; they are First Class Members of our audience.

Our programming directly addresses their needs just as much as our programming addresses the needs of the listeners in our city of license.

We interact with our translator listeners as we do with our closer listeners. We've always included translator listeners all our station mailings and communications; they care about WCPE and support us just as faithfully as closer listeners. It is not required that translator listeners have toll-free access to us, but we provide toll-free phone numbers and we

pay for local telephone directory listings for our station in all of our translator areas' phone books -- just as required for primary service, full power stations which have waivers to locate their main studio outside of their city of license. Residents of translator areas routinely call our live classical music hosts with questions and comments, just do as our closer listeners.

Listeners from our translator areas participate in station contests and activities; for example, during this past month of July, about ten percent of the telephone requests for *The WCPE Saturday Evening Request Program* were from translator listeners. If anything, this is a higher per-capita participation than one would expect based only on the population served by our main transmitter compared to the population served by our translators. This speaks to the importance of our translator services to the residents of the translator areas.

Emergency Information for Translator Listeners

WCPE has one program stream; everyone hears the same content regardless of where they are located. Everything we broadcast must have inherent value to our listeners. When emergencies occur in our core listening areas, we inform our core listeners. *Our translator listeners are part of our core audience. We broadcast emergency information affecting them with the same priority as our city of license listeners.*

For example, on July 22nd, we carried multiple emergency weather alerts specifically for translator listeners in Moore County, even though that area is outside the territory which the state emergency management department assigns us to alert. To us, our translator listeners are core listeners, so we interrupt our programming to insert warnings for them. **Our translator listeners are important and we believe they should have protected status.**

Our Translator Listeners Really Do Listen!

Listeners in Moore County are a good example because they have been served by two translators for several years. This area receives no full-time classical music station without our translators. We can assure the Commission that our Moore County listeners wouldn't say it was in their public interest if their WCPE translator was taken away from them. Our two translators there serve an estimated 35,600 people. Based on our audience estimates, 4,900 people, more than 13% of the population of that area, listen to these two translators weekly. **We don't believe that the residents of this county would consider our translators to be a "secondary" service, especially when they provided the original funds to construct**

the facilities, and they provide the funds to continue the operation of the facilities -- including ongoing donations to fully cover the tower rental and electric service.

We Treat our Translators and their Listeners with Equal Priority

We treat off-air translator situations as emergencies with equal priority to our main FM facility; we have local volunteers who act as "first responders" to do basic "reset the circuit breaker" and minor repairs as soon as they occur. They call us for instant backup when more complex situations occur which they cannot handle. We know when something happens; even if there's a brief interruption of a translator service, we get numerous and ongoing phone calls from concerned listeners. Regardless of the hour, we dispatch an engineer immediately to restore service -- just as we do for our main WCPE transmitter.

We consider our translators as primary, protected services. We treat our translator listeners as if they lived in our city of license. We believe our translator listeners should be protected against interference just as our WCPE listeners are protected against interference. To the translator listener, their hometown WCPE translator is their primary station.

LPFM advocates are asking for priority over translators based on the idea that the LPFM station originates "local" programming for some fraction of the broadcast week and therefore origination elevates them above translators which do not originate programming. *This argument is without basis:* LPFM stations are *supposed* to originate local programming and not carry outside programming -- new programming was the core basis of their genesis. Translators are *not* supposed to originate local programming -- relaying distant signals was the core basis of their genesis.

We provide local classical music programming hosted by a live announcer 24/365 with all WCPE-originated content (no computer or "automaton" at all) to our translators. An LPFM could utilize an automation system operating for the majority of the time with syndicated or recorded content. Should LPFM be allowed to displace one of our translators?

WCPE publicizes the local arts in our translator communities across our whole WCPE service area. If a translator in an area is forced off the air, what reason is left to promote the activities of non-profit organizations in areas we no longer reach? Many people who listen to WCPE will travel from adjacent counties to attend events in our translator cities; a LPFM can't reach these people even if they live only a half-hour's drive away.

Our Beliefs:

WCPE believes that LPFM can co-exist with translator services, but should not displace them. We believe that we should be allowed to serve our audiences with our existing and pending translator requests (whether granted on paper or still in the application cue/ request stage). The Commission's present regulations should not be changed to allow LPFM stations to cause harmful interference to other stations or their translators.

We firmly believe that LPFM stations should not be allowed to "squat" on frequencies that would destroy our current or future ability to fulfill the requests of our fringe area listeners. (We feel similarly that LPFM should not usurp a translator intended to fulfill a demonstrated public desire.) The fringe listeners who requested WCPE translators for their home town want the benefits of our longstanding and proven *Great Classical Music* service; they consider their need and their financial investment to be longstanding, not transient.

The current regulations were agreed to after a great deal of effort and negotiation. We believe these rules should remain as they are to preserve the integrity of the FM band and prevent interference to public radio broadcasting. New stations can be allowed, but only under rules which do not allow new interference to others, and which do not usurp the rights of existing listeners to hear their public radio station of their individual choice.

We believe the Commission should honor licenses and permits already granted to public radio stations, and we believe the Commission should continue to process applications already filed by public radio stations.

We believe that the Commission should allow applicants of currently-filed mutually-exclusive applications reasonable opportunity to resolve the conflict on their own, which may include allowing the residents of the geographic area of concern to voice their preferences.

Our Requests:

We recommend that the Commission retain the current interference protection standards for FM stations and translator services.

We recommend that the Commission maintain the current interference allocation parameters with respect to LPFM services.

We recommend that the Commission not allow LPFM stations to interfere with or displace any other broadcast facility.

Multiple thousands listen to WCPE translators. While we could ask them to verify their wishes to the Commission if so requested, on their behalf we ask the Commission to preserve and protect these listeners ability to enjoy the translators which they use.

Further, we ask the Commission to honor the construction permits already issued so that the demonstrated requests from people living in those communities can be fulfilled.

Finally, we ask that the Commission honor its commitment to the many public stations with applications artificially deadlocked in mutually exclusive FM translator applications.

Currently, mutually-exclusive applicants for the prior FM translator filing window are not even allowed to communicate with each other or attempt to resolve conflicts which affect their applications.

This restriction should be removed immediately.

These applicants with outstanding mutually-exclusive translator applications could then search solutions on their own, without expending substantial effort or resources of the Commission's engineering staff.

The Commission essentially made a commitment to those entities which have applications accepted and on file by opening a window for translator applications. We believe the Commission should honor that commitment with a sincere effort to grant as many of those applications as possible, with non-profit community broadcasters requesting translators within their fringe area given precedence in mutually exclusive situations over any application with a commercial interests, over any applicant seeking hundreds of translators in "network" fashion, over any applicant seeking translators for more than one or two primary stations, and over any applicant with attributable interests which combined seek more than an undue number of translators. **After these limitations are considered, we ask the Commission to allow non-profit community broadcasters with translator applications outstanding to resolve any remaining conflicts; then we ask the Commission to act promptly on grantable applications.** Only after the present applications are fairly reviewed, should the Commission then consider new and additional rulemaking.

Ownership Limits

LPFM was intended to be a true, local community service, with the licensee actually being a resident of the community, and the LPFM operating in a true not-for-profit mode. ***This means one entity, one LPFM station.*** It did not mean that someone can have an interest in multiple LPFMs, either by ownership, control, or creation of multiple corporations or other entities. It is proposed to modify the Ownership Limits in a manner which this commentator believes invites great abuse potential. For instance, how is the Commission going to draw the line on what constitutes an "attributable" interest in §73.885(a) as proposed. And worse, §73.885(b) allows "not-for-profit organizations" and "governmental entities with a public safety purpose" to have multiple LPFM stations.

What is to keep someone who wants to get into LPFM from forming a "not-for-profit organization with a public safety purpose" and using that to create a myriad of LPFM stations, and during times during which there are no public emergencies, from programming that network with other material? Could such a group ever do better than existing full power broadcasters and the current Emergency Alert System and state disaster management groups?

And even if a bona-fide governmental entity seeks a chain of LPFMs for public safety purposes, what is programmed and who programs the LPFMs when there's no emergency? Should other programming be allowed, or should the LPFM remain off the air unless a state of emergency is declared? And in such a drastic situation, would not existing broadcasters be better suited in terms of staff, experience, public perception, facilities, population reach, and public familiarity, trust, and awareness of regular FM radio? *The best scenario is a partnership with the municipality and public safety professionals doing what they do best, and the longstanding professional broadcasters doing what they do best.*

Consider the example of the NOAA weather radio low power transmitter network. This is a low power radio service operated by a government agency, somewhat similar to having municipal agencies run a LPFM network. After all these years, don't most people still get their emergency weather information from their favorite radio station?

Changing the LPFM ownership limits is not a good idea at all -- this goes against the "community radio" core argument for the creation of LPFM. Look at the thousands of translators now owned by a few groups if you think LPFM won't be abused if any door to multiple LPFMs is opened.

There Are Problems to be Resolved

It is true that there has been abuse in the system; allegations have been made that several entities have applied for an undue number of translators and even "sold" the rights thereto. The Commission should investigate and if those charges are proven true, those entities should be swiftly dealt with, their applications dismissed, and the Commission should demonstrate how abusers are treated by prohibiting them from holding any broadcast license.

The Commission should also seek comments on the methods used to abuse the system, and should then place protective safeguards in the rules, with strict abuse consequences. The Commission should be alert to uncover those who play the system counter to the public interest and who think they can work the system with impunity.

The Commission has to find a good solution for both those who would start a new community radio station, and those existing community radio stations with translator requests from fringe-area listeners who have been asked for a better signal from their public station -- these people feel they are equally deserving of hearing their chosen station.

WCPE has pending translator applications which would bring a good signal to a great number of people in our fringe area. They've asked for that better signal; many have made promises to help pay for equipment to bring WCPE to their home town. **WCPE hired consulting engineers to search for frequencies for the translators, and filed applications with the Commission, all in good faith and within the existing rules.**

Now the Commission is considering changing the whole process with our requests still in the processing line? Because of the actions of a few, should all applications be tossed?

***No one should have to worry that an agency will change the rules
on them halfway through their allocation process --
that just isn't good regulatory practice.***

Respectfully Submitted,



Deborah S. Proctor, BSEE, CPBE
General Manager, WCPE Radio
August 20, 2005

Postscript -- Has Anyone explored Another Option?

Parties seem intent on adding facilities in the FM band -- and the FM band only. The Commission and its Engineering Department once concluded that low power FM stations (known as "Class D" stations) were not a good use of the FM spectrum. Some have felt that 87.9 MHz could be reserved for LPFM, but the FM band cannot easily be expanded downward because the aural FM carriers of channel 6 TV stations are first-adjacent at 87.75 MHz; this almost always precludes use of 87.9 MHz. Aircraft in-flight communications begin immediately adjacent to the top end of the FM band; flight safety concerns would likely rule out even ten watt LPFM operations on 108.1 MHz.

**It has never been satisfactorily demonstrated why community
low power broadcast services had to be in the FM band.**

What's wrong with the AM band Instead?

AM transmitters are simpler and less expensive. The standard AM modulated amplifier is easy to adjust and maintain; "carrier-current" low power AM transmitters have been around for generations. Small AM radiators are simple and less expensive than even a single FM bay -- a twenty foot telephone pole with a few ground rods and wire run up it can work very well. Precedent has already been set and experience already gained with the Travelers' Information Service. (See §90.242) So we know LPAM works.

There are a number of silent AM stations sitting dormant. A number of AM stations have gone off the air permanently and surrendered their licenses. Their frequencies are available for LPAM use. It is likely that the Commission or a good engineering firm could find regional AM frequencies where LPAM stations could operate around the clock, similar to the way that Class IV AM stations operate on specifically assigned national frequencies.

This commentator believes an AM broadcaster would be hard to find that wouldn't welcome new ideas that would bring listeners back to the AM band -- and LPAM could do this. If the Commission wants to talk true "community radio", this community broadcaster says that the Commission ought to look at the AM band -- where the AM broadcasters that I know would welcome a new next door neighbor on their radio dial.

Postscript